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JAMES H. MCKENNEY,
CLERK

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 190.

**GREEN BAY & MISSISSIPPI CANAL COM-
PANY,**

PLAINTIFF IN ERROR,

vs.

**PATTEN PAPER COMPANY (LIMITED), UNION
PULP COMPANY, FOX RIVER PULP &
PAPER COMPANY, KAUKAUNA WATER
POWER COMPANY, MATTHEW J. MEADE,
HARRIET S. EDWARDS, MICHAEL A.
HUNT, ANNA HUNT, HENRY HEWITT,
JR., AUG. L. SMITH, KAUKAUNA PAPER
COMPANY, AMERICAN PULP COMPANY,
W. P. HEWITT, ET AL.,**

DEFENDANTS IN ERROR.

**Certified Copy Motion Filed in Court Below—
Filed in this Court by Permission of the
Court given November 1, 1897.**

B. J. STEVENS (Madison, Wis.),
Solicitor for Green Bay & Mississippi Canal Co.,
Plaintiff in Error.

E. MARINER (Milwaukee, Wis.),
Of Counsel.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

GREEN BAY & MISSISSIPPI CANAL
COMPANY,

PLAINTIFF IN ERROR,

v.

PATTEN PAPER COMPANY (LIMITED),
UNION PULP COMPANY, FOX
RIVER PULP & PAPER COMPANY,
KAUKAUNA WATER POWER COM-
PANY, MATTHEW J. MEADE, HAR-
RIET S. EDWARDS, MICHAEL A.
HUNT, ANNA HUNT, HENRY HEW-
ITT, JR., AUG. L. SMITH, KAU-
KAUNA PAPER COMPANY, AMER-
ICAN PULP COMPANY, W. P. HEW-
ITT ET AL.,

DEFENDANTS IN ERROR.

No. 190

For and on behalf of Mr. B. J. Stevens, solicitor, and
Mr. E. Mariner, of counsel, for plaintiff in error, in the
above-entitled cause, and by permission of the court here-
tofore, to wit, on the first day of November, 1897, granted,
the following certified copy of a motion in said cause,

made in the Supreme Court of the State of Wisconsin, is herewith filed in this court in connection and for consideration with the motion to dismiss.

It is suggested that this motion filed in the court below may be considered a sufficient showing for this court to issue its writ of *certiorari*, should such action be deemed necessary, in order to have the record show the federal question involved.

JAMES K. REDINGTON,

Of Counsel.

STATE OF WISCONSIN—IN SUPREME COURT.

PATTEN PAPER COMPANY (Limited) <i>et al.</i> ,	}
Plaintiffs and Respondents,	
<i>v.</i>	
KAUKAUNA WATER POWER COMPANY <i>et al.</i> ,	
Defendants and Respondents,	}
And Cross Action.	

The above-entitled actions, if finally determined by the order or judgment of this court, do, as appellant is advised, involve federal questions which may be reviewed in the Supreme Court of the United States (Kaukauna Case, 142 U. S. 254-278-9).

And in case of such review the writ of error to operate as a supersedeas must be sued out within sixty days, Sundays excluded, from March 10, 1896, or failing that, the right to a supersedeas will be lost. It is not practicable under the practice of this court that the Canal Company's pending submitted motion in the nature of a motion for rehearing will be determined before that time will have run. Should this pending motion be not entertained by this court, but be dismissed for failure of presentation in time, the right to a supersedeas will be lost unless the court shall set aside and re-enter the order or judgment of March 10, 1896, so as to preserve the right to a supersedeas.

Wherefore, now comes the complainant Green Bay & Mississippi Canal Company, by B. J. Stevens and E. Mariner, its attorneys, and in case of a refusal by the court to entertain the pending motion in the nature of a rehearing, moves the court to set aside, even though it shall forth-

with re-enter its order or judgment of March 10, 1896, to the end that the right to a supersedeas may not be lost.

Memphis *v.* Brown, 94 U. S. 715.

Railway Co. *v.* Murphy, 111 U. S. 488.

93 U. S. 412, Op. 419.

U. S. R. S. § 1007.

E. MARINER AND

B. J. STEVENS,

Attorneys for Complainant G. B. & M. C. Co.

STATE OF WISCONSIN, }
SUPREME COURT. }

I, Clarence Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original brief and motion to re-enter its order or judgment of March 10, 1896, in case Canal Company's motion to vacate the same is denied, to the end that the right to a supersedeas may not be lost, on file in my office in the above-entitled cause, and that it is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, the twenty-sixth day of October, A. D. 1897.

[SEAL.]

CLARENCE KELLOGG,

Clerk of the Supreme Court of Wisconsin.

170. 14.

Motion papers for D. C.

Filed Sept. 3, 1897

U.S. Supreme Court, U. S.
SEP 13 1897
JAMES M. BOWEN, CLERK.

IN SUPREME COURT OF THE UNITED STATES

October Term, 1897.

No. 100.

THE GREEN BAY AND MISSISSIPPI CANAL COMPANY,
PLAINTIFF IN ERROR.

vs.

THE PATTEN PAPER COMPANY (Limited), THE UNION
PULP COMPANY AND THE FOX RIVER PULP AND
PAPER COMPANY, KAUKAUNA WATER POWER COM-
PANY, HENRY HEWITT, Jr., W. P. HEWITT, ET AL.,
DEFENDANTS IN ERROR.

MOTION TO DISMISS OR AFFIRM.

JOHN T. FISH,
ALFRED L. CARY,
DAVID S. ORDWAY,
MOSES HOOPER,

Attorneys for Defendants in Error.

IN SUPREME COURT OF THE UNITED STATES.

October Term, 1897.

No. 190.

THE GREEN BAY AND MISSISSIPPI CANAL COMPANY,
PLAINTIFF IN ERROR,

VS.

THE PATTEN PAPER COMPANY (Limited), THE UNION
PULP COMPANY AND THE FOX RIVER PULP AND
PAPER COMPANY, KAUKAUNA WATER POWER COM-
PANY, HENRY HEWITT, JR., W. P. HEWITT, ET AL.,
DEFENDANTS IN ERROR.

MOTION TO DISMISS.

Now come the defendants in error, Kaukauna Water Power Company, Henry Hewitt, Jr., William P. Hewitt, The Patten Paper Company (Limited), The Union Pulp Company, and the Fox River Pulp and Paper Company, and move the court to dismiss the writ of error in the above entitled action because it appears upon the record returned with the writ of error; that

1. There is no federal question arising on the record filed in this court.

2. There was not drawn in question in this action in the state courts the validity of any treaty, or statute of, or authority exercised under the United States, nor was there any decision in this action in the state courts against the validity of any treaty, or statute of, or authority exercised under the United States.

3. There was not drawn in question in this action in said state courts the validity of any statute of, or authority exercised under any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States,

wherein the decision was in favor of the validity of such statute of, or authority exercised under such state.

4. No title, right, privilege or immunity claimed under the constitution of the United States, or any treaty, or statute of, or commission held, or authority exercised under, the United States, was specifically set up or claimed in the trial court or Supreme Court of the State of Wisconsin by the plaintiff in error, nor was there any decision in either of said state courts against any such title, right, privilege or immunity specially set up or claimed by the plaintiff in error.

5. The judgment from which the writ of error is taken goes upon two grounds, to-wit: 1st. That the act of the State of Wisconsin, entitled "An Act to provide for the improvement of the Fox and Wisconsin rivers and connecting the same by a canal," approved August 8th, 1848, did not give to the plaintiff in error, and that it never acquired under or pursuant to the provisions of said act, any right to the use for hydraulic purposes of any of the water of Fox river below or down stream from the government dam, or to divert the water of the said river away from the lands of the defendants in error, and that the plaintiff in error never acquired any such right by condemnation proceedings or otherwise under said act. And, 2nd. That the plaintiff in error never acquired, by purchase, limitation or otherwise, any right to divert the water of Fox river from the natural channels thereof, or from the lands of the defendants in error (except for the purposes of navigation), below or down stream from the government dam, so-called, and mentioned in the record in this case.

6. This case involves a statute of the State of Wisconsin, the construction of which by the highest court of the state in which a decision could be had adverse to the plaintiff in error will be respected and followed by this court.

7. The highest court of the State of Wisconsin in which a decision in this action could be had, in construing a statute of said state, to-wit: "An Act to provide for the improvement of the Fox and Wisconsin rivers, and connecting the same by a canal," approved August 8th, 1848, decided *against* the contention of the plaintiff in error, which contention was that said act of the state gave to the plaintiff in error the use of all the water of the Fox river except such as might be necessary for the purposes of navigation, below or down stream from the government dam.

8. The highest court of the State of Wisconsin in which a decision in this action could be had has ruled, in and by its judgment in this action, that the plaintiff in error had no right or authority, at the common law, to divert the waters of Fox river from the natural channels thereof below the government dam and away from the lands of the said defendants in error,

except for navigation purposes, which ruling went upon ground *non* federal, and which ground alone is sufficient to sustain the judgment from which the writ of error is taken.

9. If there is a federal question to be found or involved in the judgment of the state court from which this writ of error is taken, still such judgment went upon two grounds, the one federal, the other *non* federal and broad enough in itself to support the judgment from which the writ of error is taken, without reference to the federal question.

10. These defendants in error also, under Rule 6, hereby unite with the motion to dismiss a motion to affirm the judgment from which this writ of error is taken, on the ground that, although the record may show that this court has jurisdiction, it is manifest that the writ of error is taken for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

JOHN T. FISH,

ALFRED L. CARY,

Attorneys for defendant in error, Kaukauna
Water Power Company, *et al.*

DAVID S. ORDWAY,

Attorney for defendants in error, Henry
Hewitt, Jr., and William P. Hewitt, and
of counsel for said Water Power Company.

MOSES HOOPER,

Attorney for said defendants in error, Pat-
ten Paper Company, (Limited), Union
Pulp Company and Fox River Pulp and
Paper Company.

IN SUPREME COURT OF THE UNITED STATES.

THE GREEN BAY & MISSISSIPPI CANAL COM-
PANY,

Plaintiff in Error,

vs.

THE PATTEN PAPER COMPANY, (LIMITED),
THE UNION PULP COMPANY AND THE FOX
RIVER PULP AND PAPER COMPANY, ET AL.,
Defendants in Error.

October Term,
1897.

No. 190.

Notice of motion
to dismiss, etc.

TO BREESE J. STEVENS AND
EPHRAIM MARINER,

Attorneys for Plaintiff in Error.

GENTLEMEN:

Please take notice that on Monday, the 4th day of
October, A. D. 1897, at the opening of court on that day, we
shall upon the record in this cause submit to the Supreme
Court of the United States, at its court room in Washington,
D. C., a motion to dismiss the writ of error in the above
entitled action, for the reasons and upon the grounds in said
motion stated; and will also unite with said motion to dis-
miss, a motion to affirm, pursuant to the provision of subdi-
vision five (5) of Rule six (6) of the Supreme Court of the
United States; and that at the same time and place we shall
submit to the said Supreme Court in support of such motions,
printed arguments with copies of which together with a copy
of such motion you are herewith served.

Dated September 4, A. D. 1897.

Yours, etc.,

JOHN T. FISH,
ALFRED L. CARY,

Attorneys for said defendant in error, Kau-
kauna Water Power Company, *et al.*

DAVID S. ORDWAY,
Of counsel for said Water Power Company
and attorney for defendants in error, Henry
Hewitt, Jr., and William P. Hewitt.

MOSES HOOPER,
Attorney for said defendants in error, Pat-
ten Paper Company (Limited), Union Pulp
Company and Fox River Pulp and Paper
Company.